

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

| | | |
|-------------------------------|---|------------------------|
| CATHERINE HINTON, |) | |
| |) | |
| Plaintiff, |) | Civil Action No. _____ |
| |) | |
| v. |) | Jury Demand |
| |) | |
| WACKER POLYSILICON N.A., LLC, |) | |
| |) | |
| Defendant. |) | |

(In the Chancery Court of Hamilton County, Tennessee)
(No. 21-0423)

NOTICE OF REMOVAL

Defendant Wacker Polysilicon N.A., LLC (“Wacker”), pursuant to 28 U.S.C. §§ 1441 and 1446, submits this Notice of Removal of the action currently pending in the Chancery Court of Hamilton County, Tennessee, to the U.S. District Court for the Eastern District of Tennessee at Chattanooga. In support of this Notice of Removal, Wacker states:

A. State-Court Proceedings

1. On June 11, 2021, a complaint was filed against Defendant in the Chancery Court of Hamilton County, Tennessee, entitled *Catherine Hinton v. Wacker Polysilicon N.A., LLC*, No. 21-0423 (the “State-Court Action”).

2. On July 9, 2021, Plaintiff filed a Summons Return with the Chancery Court that indicated Wacker had been served with process on July 1, 2021.

3. Pursuant to 28 U.S.C. § 1446(b), Defendant timely has filed this Notice of Removal.

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4. Attached hereto as Exhibit A are copies of all process and pleadings received or otherwise known to Wacker in the State-Court Action.

B. Diversity Jurisdiction: Citizenship

5. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, inasmuch as this is a civil action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Plaintiff is a resident of Tennessee. *See* Compl. ¶3. Plaintiff currently resides in Hamilton County, which is within the jurisdiction of the Eastern District of Tennessee. *See id.* Similarly, the events that gave rise to this lawsuit occurred in Bradley County, Tennessee, which is within the Eastern District of Tennessee. *See id.* at ¶¶3-5.

7. Wacker is a Tennessee limited liability company, but takes the citizenship of its sole member, Wacker Chemical Corporation (“Wacker Chemical”). *See V & M Star, LP v. Centimark Corp.*, 596 F.3d 354, 356 (6th Cir. 2010) (“[L]imited liability companies have the citizenship of each partner or member.”). Wacker Chemical is a corporation organized under the laws of the State of Delaware, with its principal place of business in the State of Michigan.

C. Diversity Jurisdiction: Amount in Controversy

8. In her Complaint, Ms. Hinton does not assert a specific monetary damage amount she is seeking. *See generally* Compl.

9. Plaintiff alleges that she was denied promotions because of her race and gender, including a Warehouse Supervisor position awarded to another candidate who started in that position on July 1, 2019. Compl. ¶¶11-12; Cassem Dec. ¶4.¹

10. As of July 1, 2019, Ms. Hinton was a full-time, non-exempt employee who regularly worked approximately 40 hours each week, and her hourly wage rate was \$21.87. *Id.* at ¶¶3-4.

11. In 2019, Ms. Hinton earned gross wages of \$49,211.08. In 2020, she earned \$48,939.73. From January through June of 2021, she earned \$23,424.45, which equates to an expected annualized income of \$46,848.90. *Id.* at ¶4.

12. The individual who was selected for the Warehouse Supervisor position – Steven Messer – is an exempt employee who, as of July 1, 2019, was paid at the biweekly rate of \$2,746.86 *Id.* at ¶5.

13. In 2019, Mr. Messer earned gross wages of \$73,217.86. In 2020, he earned \$76,528.70. From January through June of 2021, he earned \$40,128.09, which equates to an expected annualized income of \$80,256.18. *Id.*

14. Based solely on the wage differential between Ms. Hinton and Mr. Messer from 2019 through the date of filing of the Complaint, the amount in controversy equals \$68,299.39. With an expected trial date sometime during the latter half of 2022, and an income differential of approximately \$35,000 annually between Mr. Messer and Ms. Hinton, the potential back-pay damages accrued by the trial date push the amount in controversy well over \$75,000. *See Shupe*

¹ The Declaration of Theresa Cassem is attached hereto as Exhibit B and cited herein as “Cassem Dec. ¶__.”

v. Asplundh Tree Expert Co., 566 F. App'x 476, 479 (6th Cir. 2014) (“It is appropriate to consider back pay beyond the time of removal when a plaintiff seeks an award for back pay that includes future accruals.”).

15. The amount-in-controversy threshold further is exceeded by Ms. Hinton’s claim for potential front-pay and/or compensatory damages. *See* Compl. ¶14, Prayer for Relief; *see also Belew v. Seco Architectural Sys., Inc.*, No. 3:16-cv-172, 2017 WL 385775, at *3 (E.D. Tenn. Jan. 25, 2017) (“In computing the amount in controversy, the Court may consider [] unspecified amounts of damages ... [such as] “humiliation and embarrassment.”).

16. Consequently, this Court has jurisdiction over Ms. Hinton’s claims under 28 U.S.C. § 1332.

17. A notice of removal is being filed simultaneously with the state court and provided to all parties as required by 28 U.S.C. § 1446(d). A copy of such notice is attached as Exhibit C.

WHEREFORE, Wacker respectfully requests that the action now pending against it in the Chancery Court of Hamilton County, Tennessee be removed to this Court pursuant to 28 U.S.C. § 1441 *et seq.*

Respectfully submitted,

MILLER & MARTIN PLLC

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was filed electronically, and a copy was sent via U.S. Mail to effectuate service upon the following:

Ms. Catherine Hinton
3307 Navajo Drive
Chattanooga, TN 37411

This 30th day of July, 2021.

By: s/ Scott E. Simmons